S.B.Civil Revision Petition No.410/2006

Ms. Roshan Akhtar and another.

vs.

Peer Ajhar Hussain and others.

Date : 13.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Om Mehta, for the petitioners.
None present for the respondents.

- - - - -

Heard learned counsel for the petitioners as nobody appeared for the respondents even in second round.

The plaintiffs filed the suit in the year 2005 for cancellation of will dated 20.8.1995, which according to the petitioners was dated 25.8.1995. The executant of will dated 29.1.1996. The plaintiffs admitted that they had knowledge of the will but filed suit for cancellation of will in the year 2005.

An objection was raised by the petitioners/ defendants about bar of limitation as the suit has been

filed after more than three years period, therefore, the petitioners prayed that the suit may be dismissed.

The trial court, while interpreting Article 59 of the Indian Limitation Act, observed that the Will cannot be considered to be instrument and limitation provided under Article 59 applies only to instruments and not upon the documents.

According to learned counsel for the petitioners, the court below has not examined whether the suit still is barred even if it is not covered within the definition of instrument and does not falls within Article 59. According to learned counsel for the petitioners, maximum limitation provided under the Indian Limitation Act, under Article 113, for filing any suit for which no period of limitation is provided elsewhere in the Limitation Act, is three (3) years. In either case whether it falls within Article 59 or in the residuary clause, Article 113, the suit from the plaint allegations itself is barred by law.

I considered the submissions of learned counsel for the petitioner and perused the order of the court below dated 6.7.2006.

It is not in dispute that the alleged Will was

executed on 20.8.1995 (or 25.8.1995) and executant died on 29.1.1996 and the suit has been filed in the year 2005 for cancellation of said Will, apparent from the plaint allegations itself, the suit has been filed beyond the period of limitation prescribed under Article 59 or Article 113 of the Limitation Act, therefore, the court below has committed error of law in passing the order dated 6.7.2006 in rejecting the application of the petitioners filed under Order 7 Rule 11 CPC.

In view of the above, this revision petition is allowed, the order dated 6.7.2006 is set aside, the petitioners' application under Order 7 Rule 11 CPC is allowed and the suit of the plaintiffs is dismissed and it is held that the suit was barred by time.

(PRAKASH TATIA), J.

S.Phophaliya